

REMARKS

With this Response, no claims are amended. No claims are added. No claims are cancelled. Therefore, claims 1-25 are pending.

CLAIM REJECTIONS - 35 U.S.C. § 102

Claims 1, 2, 6-11 and 15-24 were rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent No. 6,580,700 to Pinard et al. (hereinafter “Pinard”).

Claim 1

Applicant respectfully notes claim 1 recites, in part:

“determining if the received packet is an informational packet;

...

determining information regarding the first channel from the received packet if the received packet is **not** an informational packet,” emphasis added.

Applicant submits the Final Rejection is in error because Pinard fails to disclose at least “determining information regarding the first channel from the received packet if the received packet is **not** an informational packet” because Pinard utilizes probe response packets which are each “informational packet.”

As described by Applicant in paragraph [0018], while a received packet may be an informational packet, “such as, for example a beacon or a probe response,” a received packet is not necessarily an informational packet. As Applicant describes at least in paragraphs [0019]-[0020], where the received packet is not an informational packet, “collected packets may be analyzed to extract information” to determine a particular access point is unsuitable. Therefore, without an informational packet being received from an AP, a wireless device may redirect scanning to other channels based on information determined from packets which are not informational.

In the rejection of claim 1, the Office Action states the claimed “informational packet is broad and is mapped to Pinard’s probe response packet.” (Final Office Action mailed 12/24/2008, p. 3). As further cited in the final rejection, Pinard determines an average RSSI over a predetermined number of probe responses, which the Final Office Action has correctly interpreted to be an “informational packet.”

On this basis, Applicant submits Pinard discloses only the use of informational packets and therefore fails to disclose updating any channel statistic based on information determined from a received packet that is **not** an informational packet. For at least this reason, Applicant submits Pinard fails to anticipate claim 1. Applicant therefore requests removal of the 35 U.S.C. § 102 rejection of claim 1, as well as all dependents thereof (claims 2-7) which include at least the same limitations as claim 1.

Applicant notes independent claims 8, 17, 20 and 23 include limitations analogous to those specifically described in reference to claim 1. Therefore, for at least the same reasons provided for claim 1, Applicant submits claims 8-11 and 15-24 are also allowable over Pinard. Applicant therefore requests removal of the 35 U.S.C. § 102 rejection of claims 8-11 and 15-24.

CLAIM REJECTIONS - 35 U.S.C. § 103

Claims 3, 12 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pinard in view of US Patent No. 6,898,198 to Ryan (hereinafter “Ryan”).

Applicant has reviewed Ryan and is of the position that Ryan fails to cure the deficiency of Pinard noted with respect to claims 1, 8 and 23. Therefore, Applicant submits claims 3, 12 and 25, as dependents of claims 1, 8 and 23, respectively, are allowable over the combination of Pinard and Ryan.

Claims 4 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pinard in view of US Publication No. 2006/0092888 to Jeong (hereinafter “Jeong”).

Applicant has reviewed Jeong and is of the position that Jeong fails to cure the deficiency of Pinard noted with respect to claims 1 and 8. Therefore, Applicant submits claims 4 and 13, as dependents of claims 1 and 8, respectively, are allowable over the combination of Pinard and Ryan.

Claims 5 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pinard in view of US Publication No. 2005/0073979 to Barber (hereinafter “Barber”).

Applicant has reviewed Barber and is of the position that Barber fails to cure the deficiency of Pinard noted with respect to claims 1 and 8. Therefore, Applicant submits claims 5 and 14, as dependents of claims 1 and 8, respectively, are allowable over the combination of Pinard and Ryan.

The absence of additional patentability arguments should not be construed as either a disclaimer of such arguments or that such arguments are not believed to be meritorious.

CONCLUSION

Applicant respectfully requests examination of the above-identified application in view of the response.

For at least the foregoing reasons, Applicant submits that the rejections of the claims have been overcome herein, placing all pending claims in condition for allowance. Such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the above-identified application.

The Commissioner is authorized to charge or credit any deficiencies or overpayments in connection with this submission to Deposit Account No. 02-2666, and is requested to notify us of same.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

February 23, 2009

Date

/James M. Howard/

James M. Howard
Reg. No. 56,377

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
Telephone: 503-439-8778